

**SUBCONTRACTOR AND LOWER TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION
OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A-E CREI – 09/04] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$550,000.)

(a) Subcontractor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$550,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A)

- (i) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
 - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government Subcontract, proof that an exception has been granted for the schedule item.
- (iii) Information on modifications of Subcontracts or First-tier Subcontracts for commercial items. If (i) the original Subcontract or First-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or First-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or First-tier Subcontract) is not exempted based on one of

these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or First-tier Subcontract from a Subcontract or First-tier Subcontract for the acquisition of a commercial item to a Subcontract or First-tier Subcontract for the acquisition of an item other than a commercial item.

- (C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.

(b) First-tier Subcontractor Cost or Pricing Data.

- (1) Before awarding any First-tier Subcontract expected to exceed \$550,000 when entered into, or before pricing any First-tier Subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Subcontractor shall require the First-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the First-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any First-tier Subcontract change or other modification does not apply to any First-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a First-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.
- (3) The Subcontractor shall require the First-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the First-tier Subcontract or First-tier Subcontract modification.
- (4) In each First-tier Subcontract that exceeds \$550,000 when entered into, the Subcontractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the First-tier Subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a First-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a First-tier Subcontractor or prospective First-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.
- (2) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective First-tier Subcontractor that was not subsequently awarded the First-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual First-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no First-tier Subcontract, was less than the prospective First-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual First-tier Subcontract price was not itself affected by defective cost or pricing data.
- (3)
 - (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:

- (i) The Subcontractor or First-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
- (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or First-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
- (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.
- (iv) The Subcontractor or First-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(B)

- (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:
 - a. The Subcontractor certifies to the Contracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
 - (ii) An offset shall not be allowed if:
 - a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or
 - b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Subcontractor or First-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.